

MINUTES
HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS
January 23, 2012

The House Select Committee on Homeowners Associations (Committee) held a public hearing on Monday, January 23, 2012 at 1:00 p.m. in the Auditorium of the Legislative Building.

The following members were present: Representative Jonathan Jordan, Presiding Co-Chair, Representative Carolyn Justice, Co-Chair, Representative Kelly Hastings, Representative Julia Howard, Representative Darrell McCormick, Representative Rodney Moore, Representative Winkie Wilkins, Representative Tim Spear, and Representative Jennifer Weiss. The attending Sergeants-at-Arms were Mr. Reggie Sills, Mr. Jesse Hayes, and Mr. Young Bae. Committee staff including Mr. Ed Stiles, Committee Clerk, and Ms. Jennifer McGinnis, Mr. Dan Ettefagh, and Mr. Bill Patterson, Committee Counsels, were also present.

On December 20, 2011, notice was sent to members and interested parties via e-mail. A copy of these notices is included in the attachments to these minutes as **Attachment #1**. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as **Attachment #2** and **Attachment #3**, respectively.

Call to order and introductory remarks

Representative Jordan called the public meeting to order, reminding those in attendance of the Committee's charge, which is as follows: study homeowners protection and participation in the governance of their homeowners associations (HOAs), particularly as to assessments and record-keeping, and any other matter reasonably related to the subject matter.

Representative Jordan entertained a motion to approve the Committee budget (Attachment #4). Representative Burr moved to approve the budget with Representative Justice seconding. The motion passed on a voice vote.

Representative Jordan reminded that those wishing to speak were limited to three minutes with the Sergeant-at-Arms giving the warning signs of when the speaker's time was getting short or expired.

There were fifty-one citizens representing HOA members, HOA management companies, realtors, and legal counsel for HOAs who spoke at the hearing. In addition to their spoken comments, a number of written statements were submitted to be entered into the Committee record (see **Attachment #4**).

A variety of comments were received at the hearing including, but not limited to, coverage of the following issues: establishment of a task force (including homeowners) to study HOA matters; establishment of term limits for board members and additional measures for accountability to prevent abuses; guidelines for board member conduct; addition of protections for homeowners to the Planned Community Act (particularly additional limitations on

foreclosure power to prevent foreclosure over very small delinquent sums)/enactment of a homeowners' bill of rights; prohibitions on proxy voting; licensure of board members; creation of a government agency for enforcement, oversight, education, and registration; disclosure problems (knowledge and/or understanding of HOA powers and homeowner rights and responsibilities at time of purchase); prohibitions on amendment to declarations; clarification of applicability of the Planned Community Act to pre-1999 communities; enactment of limits on declarant control and declarants' ability to change declarations/covenants at will; licensure of community association managers (passage of S373 (2011) "Community Association Managers Licensing Act"); enactment of provisions governing financial reserves; requirements for annual audit; lack of remedies for aggrieved homeowners – costly lawsuit is currently the only recourse to challenge HOA (arbitration/alternative dispute resolution would be helpful).

Many comments were received in support of HOAs and their current powers. Several speakers emphasized: the majority of HOAs are well-managed; all owners living in planned communities should expect to pay their fair share; the need for HOAs to collect dues to maintain communities and provide essential services, and the need for fine, lien, and foreclosure authority as an enforcement tool in connection with delinquent dues/non-compliant homeowners; HOAs could benefit from additional tools to collect bad debt; authorize HOAs to issue stop-work orders; HOA boards consist of volunteers that do their best to serve their communities; additional regulations will only serve to drive up costs for HOAs (and may necessitate increases to dues); status quo is sufficient – don't over-regulate.

Sam Franck, a member of the Real Property Section of the North Carolina State Bar offered the Committee the Bar's assistance in drafting any legislation the Committee may be interested in pursuing. Representative Justice indicated that the Committee would indeed be interested in hearing from the Real Property Section as to how the Committee might address issues that have been raised. Representative Weiss requested information on the members of the Real Property Section and particularly if public interest lawyers were involved, and Mr. Franck indicated a list of council members of the Section would be provided.

Representative Justice asked follow-up questions on comments concerning: (i) annual HOA audits - what would cost be, and would an audit requirement call for a review, a full-fledged audit, or a hybrid of the two; (ii) proxy voting – generally speaking, how often is proxy voting used (in some communities with many absentee homeowners it is common). Additionally, Representative Justice inquired about the process for dissolving a HOA if an association can't provide the necessary services.

After one speaker indicated that they still had a lien on their property even after having paid their back dues, Representative Jordan asked staff to investigate whether the statutes required a release of lien within a certain time period after a debt had been satisfied.

After the participants finished, Representative Jordan thanked all those who participated who had made public statements, both verbally and written. He also announced that there would be two additional public hearings off-site. The first one will be presided over by Representative

Justice in Eastern North Carolina, and the second one will be presided over by Representative Jordan in Western North Carolina. Details will follow. Representative Jordan also stated that an April meeting will be held to discuss possible legislation to be drafted to resolve some of the problems surrounding Chapter 47F, the Planned Community Act.

Representative Justice thanked Representative Jordan for the work he did in presiding over the meeting as well as the people who participated. She also stated that she has learned a great deal from listening to the discussions of the last couple meetings. Representative Jordan stated that he saw a few problems that legislation would be helpful in addressing.

There being no further business to come before the committee, Representative adjourned the meeting at 4:10 p.m.

Representative Jonathan Jordan, Co-Chair

Representative Carolyn Justice, Co-chair

Attest

Ed Stiles, Committee Assistant